

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

C.A. Case No. 22-16128

Plaintiff and Appellee,

D.C. Case No.: 2:21-mc-00098-TLN-AC
Eastern District of California, Sacramento

v.

MICHAEL BRUMBRAUGH,

Claimant and Appellee,

v.

STEVEN ZINNELL,

Defendant and Appellant.

APPELLANT STEVEN ZINNELL'S REPLY TO MICHAEL BRUMBRAUGH'S OPPOSITION (DKT NOS. 26 & 27) TO STEVEN ZINNELL'S MOTION TO SUBSTITUTE DAVID ZINNELL'S SURVIVING SPOUSE JENNIFER ZINNELL BACK AS APPELLEE AND REMOVE MICHAEL BRUMBRAUGH AS AN APPELLEE IN THIS APPEAL AND MOTION TO STAY BRIEFING

STEVEN ZINNELL
11 Verdin Lane
Aliso Viejo, CA 92656

Appellant In Pro Se

Appellant STEVEN ZINNEL (“Zinnel” or “Appellant”), hereby Replies to Michael Brumbaugh’s Opposition (Dkt Nos. 26 & 27) to Steven Zinnel’s Motion to Substitute David Zinnel’s Surviving Spouse Jennifer Zinnel back in as an Appellee and Remove Michael Brumbaugh as an Appellee in this Appeal and Motion To Stay Briefing:

Prior to filing Michael Brumbaugh’s Opposition on October 18, 2023, (Dkt Nos. 26 & 27) attorney Kenneth Gregory Peterson knew Appellant was filing Motions for Reconsideration of the two erroneous Sacramento Superior Court Probate Division *ex parte* orders because Appellant notified attorney Kenneth Gregory Peterson and Michael Brumbaugh in writing in a letter emailed to them on October 17, 2023. (see Exhibit 3 attached hereto). Since then, Appellant has timely submitted to the Sacramento Superior Court Probate Division two Motions for Reconsideration seeking to vacate the two *ex parte* orders referenced and attached to Michael Brumbaugh’s Opposition. Attached to this Reply, as Exhibits 4 & 5, are copies of both Notice of Motions and Motions to Reconsider both *ex parte* orders.

As contained in the Notice of Motions, attorney Kenneth Gregory Peterson did not provide proper notice of the *ex parte* applications, failed to submit to the Sacramento Superior Court Probate Division a “Declaration” under penalty of perjury explaining of the facts of the case, and why the matter is so urgent it should be heard *ex parte* as required by California *Rules of Court* Rule 3.1202(c) which mandates a supporting declaration of all *ex parte* applications, and most disturbingly,

attorney Kenneth Gregory Peterson and Michael Brumbraugh made numerous blatantly misrepresentations and false representations to the Sacramento Superior Court Probate Division in their *ex parte* applications.

California *Code of Civil Procedure* §1008 concerns motions for reconsideration and states in relevant part:

(a) When an application for an order has been made to a judge, or to a court, and ...granted...any party affected by the order may, within **10 days after service upon the party of written notice of entry of the order** and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

(h) This section applies to all applications for interim orders.

California *Code of Civil Procedure* §1008 provides for reconsideration of court orders. A motion to reconsider is broad in scope and allows any party affected by the order to seek reconsideration and vacation of prior orders. *Morite of Calif. v. Super Ct.* (1993) 19 Cal.App.4th 485, 490.

The Sacramento Superior Court Probate Division filing procedures are that movants submit motions without a hearing date and time, and a staff attorney will review the motion and thereafter notify the court clerk of the date and time of the hearing of any submitted Motion that works with the court's calendar. Thereafter, a deputy clerk will notify the movant of the date and time and file the motion and then the movant can serve the motion, supporting papers, and notice.

As of the date of this Reply, the Sacramento Superior Court Probate Division has not notified Appellant of the date and time of the hearings on Appellant's two Motions for Reconsideration.

Therefore, Appellant requests that this Court delay ruling on Appellant's Motion to Substitute David Zinnel's Surviving Spouse Jennifer Zinnel Back as Appellee and Remove Michael Brumbraugh as an Appellee until the Sacramento Superior Court Probate Division rules on Appellant's Motions for Reconsideration of the *ex parte* orders. In the interim, Appellant requests that this Court stay briefing until after the Sacramento Superior Court Probate Division rules on Appellant's Motions for Reconsideration of the erroneous *ex parte* orders. Appellant, will file notices with this Court of the Sacramento Superior Court Probate Division rulings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven Zinnel".

Steven Zinnel, Defendant and Appellant In Pro Se

Dated: October 25, 2023

EXHIBIT 3

Steve Zinnel
11 Verdin Ln.
Aliso Viejo, CA 92656

T. 213-547-6456
E. firsthalfsteve@gmail.com

October 17, 2023

Kenneth Gregory Peterson
K. Greg Peterson, APC
455 Capitol Mall, Suite 325
Sacramento, CA 95814

Via Email Only
T. 916-443-3010
E. greg@kgregpeterson.com

Michael Brumbaugh
MBI Consulting Group, Inc.
P.O. Box 3100
Fair Oaks, CA 95628

Via Email Only
T. 916-417-8737
E. mike@mbi-re.com

Re: *In the Matter of: The Castana Trust Dated March 4, 2009*
Sacramento Superior Court case no. 34-2016-00200990-PR-TR-FRC

Estate of David P. Zinnel
Sacramento Superior Court case no. 34-2023-00336772

Dear Messrs. Peterson and Brumbaugh:

I am in receipt of the *ex parte* moving papers dated October 11, 2023 in the above referenced cases and the erroneous orders granting both *ex parte* applications filed October 16, 2023. Based on the blatant misrepresentations by attorney Kenneth Gregory Peterson in the *ex parte* applications, verified under penalty of perjury by Michael Brumbaugh, of course I will be filing the following motions:

- Motions for reconsideration of both *ex parte* orders pursuant to California *Code of Civil Procedure* section 1008(a) to reverse both *ex parte* erroneous orders and point out the fraud on the court;
- Motions with the Third District Court of Appeal to stay the *ex parte* orders;
- Motion to remove Michael Brumbaugh as the Successor Trustee of the Castana Trust;
- Motion to remove Michael Brumbaugh as the administrator of the Estate of David P. Zinnel;

Steven Zinnel

Kenneth Gregory Peterson
Michael Brumbaugh
October 17, 2023
Page 2

- Motion to compel Michael Brumbaugh, Kenneth Gregory Peterson, and Jennifer Zinnel to produce all the documents I have previously requested many times in writing;
- Motion to compel Michael Brumbaugh, Kenneth Gregory Peterson, and Jennifer Zinnel to provide the address of the commercial yard that has *used vehicles, equipment and other personal property*, pictures of the *used vehicles, equipment and other personal property*, and evidence of ownership of the *used vehicles, equipment and other personal property* by the Estate of David P. Zinnel.

Turning specifically to the Estate of David P. Zinnel, I have been writing David Zinnel and attorney Kenneth Gregory Peterson for a year and a half now, requesting the immediate return of all my property. In the Estate of David P. Zinnel *ex parte* application, both Michael Brumbaugh and Kenneth Gregory Peterson admit I a verified petition that the Estate of David P. Zinnel has my my personal property when they write:

There is a commercial yard located in Sacramento County where there are a number of used vehicles, equipment and other personal property that are believed to be property of the Estate. The yard is currently rented at the expense of the Estate and there is no income available to pay the rental expense. It is also not clear that the vehicles, equipment and other personal property are of any unique value and due to the ongoing rental expense they should be liquidated as soon as possible. Marshaling the assets of the Estate is necessary during the pendency of Steven Zinnel's appeal of this Court's August 15, 2023, Order, and this Court should therefore issue appropriate orders allowing Michael Brumbaugh to exercise his powers as administrator in these regards.

First, the *number of used vehicles, equipment and other personal property that are believed to be property of the Estate* have been sitting there for ten years so there was nothing urgent about selling them right away. More importantly, the *number of used vehicles, equipment and other personal property* ARE NOT part to the Estate of David P. Zinnel. They are my property. Demand is made that the address of the commercial yard is provided to Steven Zinnel forthwith along with pictures of the *used vehicles, equipment and other personal property* forthwith. Also, please provide me all documents that would evidence that *number of used vehicles, equipment and other personal property that are believed to be property of the Estate*.

I the address of the commercial yard, pictures of the *used vehicles, equipment and other personal property*, evidence of ownership by the Estate of David P. Zinnel is not provide to me by Friday October 20, 2023, I will file the aforementioned motion to compel with the Probate Court to compel the requested information.

Steven Zinnel

Kenneth Gregory Peterson
Michael Brumbaugh
October 17, 2023
Page 3

Attorney Kenneth Gregory Peterson, Michael Brumbaugh, and Jennifer Zinnel should be mindful of Justice Brandeis' advice in 1933:

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.

Justice L. Brandeis, Other People's Money 62 (National Home Library Foundation ed. 1933).

What are Kenneth Gregory Peterson, Michael Brumbaugh, and Jennifer Zinnel trying to hide?

I trust this letter clearly communicates my position, intended actions, requests, and expectations.

Very truly yours,

Steve Zinnel

Steve Zinnel
Co-Beneficiary of the *Castana Trust*
Creditor in the Estate of David P. Zinnel

cc: Jennifer Zinnel via email at hunter916@comcast.net

EXHIBIT 4

1 STEVEN ZINNEL
2 11 Verdin Lane
3 Aiso Viejo, CA 9265

4 T. 213-547-6456
5 E. firsthalfsteve@gmail.com

6 Objector and Co-Beneficiary of the Castana Trust dated March 4, 2009 In Pro Per

7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 FOR THE COUNTY OF SACRAMENTO

11 IN THE MATTER OF:

12 THE CASTANA TRUST
13 DATED MARCH 4, 2009

14 Case No. 34-2016-00200990-PR-TR-FRC

15 **NOTICE OF MOTION AND MOTION FOR**
16 **RECONSIDERATION OF THE COURT'S *EX***
***PARTE* ORDER ISSUED ON OCTOBER 16, 2023**
ENTITLED "ORDER EX PARTE
APPLICATION FOR ORDERS DIRECTING
TRUSTEE"
[C.C.P. §1008]

17
18 Hearing

19 Date: _____

20 Time: _____

21 Dept: 129

22 Judge: Hon. John P. Winn

23
24
25 TO MICHAEL BRUMBAUGH, JENNIFER ZINNEL, JOSHUA ZINNEL,
26 KATELYNN ZINNEL, AND ATTORNEY KENNETH GREGORY PETERSON:
27
28

1 PLEASE TAKE NOTICE that on the date, time, and department specified above in the
 2 caption on page 1, or as soon thereafter, as the matter may be heard in Department 129 of the above-
 3 entitled Court located at the William R. Ridgeway Family Relations Courthouse, 3341 Power Inn
 4 Road, Sacramento, CA 95826, Objector and Castana Trust Co-Beneficiary Steven Zinnel (“Zinnel”)
 5 will, and hereby does, move Judge John P. Winn to reconsider the *ex parte* order he made on October
 6 16, 2023 entitled “Order *Ex Parte* Application for Orders Directing Trustee” (“EX PARTE ORDER”)
 7 ¹ by simply signing Movant’s Proposed Order and **thereafter enter a new order DENYING the *ex***
 8 ***parte* application of Movant Michael Brumbaugh filed on October 12, 2023 in its entirety.** Said
 9 motion will be made pursuant to California *Code of Civil Procedure* §1008 and upon the following
 10 compelling grounds:

- 11 A. The motion for reconsideration is brought pursuant to California *Code of Civil Procedure*
 12 §1008 as there are new facts, different facts, new circumstances, and law to reverse the EX
 13 PARTE ORDER and point out the fraud on the court committed by Petitioner Michael
 14 Brumbaugh and his attorney Kenneth Gregory Peterson;
- 15 B. In support of the Application for *Ex Parte* order there was no “Declaration” under penalty of
 16 perjury explaining of the facts of the case, and why the matter is so urgent it should be heard
 17 *ex parte* as required by California *Rules of Court* Rule 3.1202(c) which mandates a
 18 supporting declaration of all *ex parte* applications;
- 19 C. The EX PARTE ORDER denies Zinnel any remedy in his pending appeal of the August 30,
 20 2023 order appointing Michael Brumbaugh as Successor Trustee of the Castana Trust dated
 21 March 4, 2009, which Judge John P. Winn authorized on the record, because the damage
 22 inflicted by Michael Brumbaugh and his attorney Kenneth Gregory Peterson will be done
 23 by the time the Third District Court of Appeal decided the pending appeal causing great
 24 prejudice to Steven Zinnel;

25
 26
 27 ¹ A true and correct copy of the Order that Zinnel moves to the court to reconsider is attached to the concurrently filed
 28 Index of Exhibits as Exhibit 2.

1 D. When *ex parte* notice was given to Stven Zinnel by someone from attorney Kenneth Gregory
2 Peterson's law office via telephone on October 11, 2023 at around 10:45 A.M., Steven Zinnel
3 requested the *ex parte* application be emailed to him forthwith. However, by the time Zinnel
4 had to mail his skeletal opposition by Priority Mail on October 11, 2023, Zinnel had never
5 received Movant's *ex parte* application by email thus Zinnel was prevented from fully
6 opposing the *ex parte* application which greatly prejudiced Steven Zinnel;

7 E. When *ex parte* notice was given to Stven Zinnel by someone from attorney Kenneth
8 Gregory Peterson's law office via telephone on October 11, 2023 at around 10:45 A.M., the
9 name of the case was not provided, the case number was not provided, the name of the court
10 was not provided, nor was the requested relief provided, thus by the time Zinnel had to mail
11 his skeletal opposition by Priority Mail on October 11, 2023, Zinnel had no idea what the
12 case nor what relief was requested and thus Zinnel was prevented from fully opposing the
13 *ex parte* application resulting in Steven Zinnel being greatly prejudiced;

14 F. It appears that Judge John P. Winn did not consider Steven Zinnel's skeletal opposition to
15 Movant's *ex parte* application and thus he mistakenly thought the *ex parte* application was
16 unopposed;

17 G. Attorney Kenneth Gregory Peterson and Successor Trustee Michael Brumbaugh blatant
18 misrepresentations to this court in their *ex parte* application filed on October 12, 2023 that
19 Zinnel had no chance to bring to the court's attention before the court simply signed
20 Movant's Proposed Order Ex Parte Application for Orders Directing Trustee;

21 H. Attorney Kenneth Gregory Peterson and Successor Trustee Michael Brumbaugh blatantly
22 misrepresented to the court in their *ex parte* application that the Castana Trust dated March
23 4, 2009 needs to participate in the Ninth Circuit Court of Appeals Case entitled *United States*
24 *of America v. Steven Zinnel / TD Ameritrade Clearing, Inc.*, Ninth Circuit case #22-16128
25 ("Federal Appeal") when in fact the Castana Trust was never a party or claimant in the
26 underlying United States District Court case and thus the Castana Trust has no standing in
27 the pending federal appeal. Thus, the Castana Trust has no dog in the fight in the federal
28

1 garnishment appeal and there is no reason to waste Castana Trust resources participating in
2 the federal appeal;

3 I. Attorney Kenneth Gregory Peterson and Successor Trustee Michael Brumbraugh blatantly
4 misrepresented to the court in their *ex parte* application that Steven Zinnel's Issue on Appeal
5 in the pending Ninth Circuit is: *it is believed that through his appeal to the Ninth Circuit*
6 *Court of Appeals* [Steven Zinnel] *seeks to overturn the settlement* [agreement reached on
7 June 3, 2022 in the United States District Court] when in fact Attorney Kenneth Gregory
8 Peterson has known for over a year that Steven Zinnel is not challenging the June 3, 2022
9 Settlement Agreement and is actually seeking to enforce the agreements made by the
10 government during the Court-supervised Settlement Conference;

11 J. Attorney Kenneth Gregory Peterson and Successor Trustee Michael Brumbraugh blatantly
12 misrepresented to the court in their *ex parte* application that [Zinnel] *has since refused to*
13 *observe his obligations under the* [June 3, 2022] *settlement agreement*;

14 K. Attorney Kenneth Gregory Peterson and Successor Trustee Michael Brumbraugh blatantly
15 misrepresented to the court in their *ex parte* application that the TD Ameritrade IRA titled in
16 Zinnel's deceased mother Ardith Ferris' name is a Castana Trust asset when in fact during
17 a hearing in this court, in this case, on April 7, 2022, Judge Joginder Dhillon stated that the
18 TD Ameritrade IRA titled in Zinnel's deceased mother Ardith Ferris' name would have to
19 be probated and United States of America's attorney AUSA Lynn Trinka Ernce stated in
20 papers filed in the United States District Court and during the June 3, 2022 Settlement
21 Conference, that the TD Ameritrade IRA titled in Zinnel's deceased mother Ardith Ferris'
22 name was not a Castana Trust asset under the law;

23 L. There is no reason Jennifer Zinnel cannot continue to collect the rents and pay the mortgage
24 on the two rental properties as she did from the date of former Successor Trustee David P.
25 Zinnel's tragic death on October 14, 2022 through the appointment of Successor Trustee
26 Michael Brumbraugh on August 30, 2023;

27

28

1 M. There is no reason Jennifer Zinnel cannot participate in the Federal Appeal right now as she
2 has previously filed a motion with the Ninth Circuit Court of Appeals to be the appellee;
3 N. The relief sought in the *ex parte* application affects Steven Zinnel's substantial rights thus
4 a noticed motion was required. (See, *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th
5 199, 207.)
6 O. The relief sought in the *ex parte* application cannot be pursued on an *ex parte* basis; instead,
7 it must be requested through a properly notice motion. (Weil et al., Civil Proc. Before Trial
8 (Rutter, 2013) ¶ 9:347-49; *St. Paul Fire & Marine Ins. Co. v. Sup. Ct* (1984) 156 Cal.App.3d
9 82, 86.)
10 P. The *ex parte* application did not demonstrate emergency situations where there is not
11 enough time for a standard motion, which typically take about four weeks (16 court days
12 minimum);
13 Q. Because of the one-sided nature of an *ex parte* application and the obvious due process
14 concerns, the court should have issued an order setting the matter for hearing and giving
15 Steven Zinnel time to receive the *ex parte* application and file a complete opposition;
16 R. In the alternative, the court should have appointed a temporary trustee pursuant to *Probate*
17 *Code* §1310(b) if the court had concerns regarding the administration of the Castana Trust.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Pursuant to California *Probate Code* §17201 the names and addresses of each person entitled
 2 to notice of this motion are:

3 Kenneth Gregory Peterson 4 K. Greg Peterson, APC 5 455 Capitol Mall, Suite 325 6 Sacramento, CA 95814 7 8 Email: greg@kgregpeterson.com	9 Michael Brumbaugh 10 MBI Consulting Group, Inc. 11 P.O. Box 3100 12 Fair Oaks, CA 95628 13 14 Email: mike@mbi-re.com
9 Alleged attorney for Michael Brumbaugh, the 10 <i>Estate of David P. Zinnel</i> and the <i>Castana</i> 11 <i>Trust dated March 4, 2009</i>	12 Alleged Administrator of the <i>Estate of David</i> 13 <i>P. Zinnel</i> and the alleged Successor Trustee of 14 the <i>Castana Trust dated March 4, 2009</i>
15 Jennifer Zinnel 16 6939 Lisa Marie Way Carmichael, CA 95608 17 18 Spouse of Deceased David P. Zinnel and 19 alleged Beneficiary/Heir	20 21 22
23 Joshua Zinnel 24 6939 Lisa Marie Way 25 Carmichael, CA 95608 26 27 Child of Deceased David P. Zinnel and 28 alleged Beneficiary/Heir	28 Katelynn Zinnel 29 6939 Lisa Marie Way 30 Carmichael, CA 95608 31 32 Child of Deceased David P. Zinnel and 33 alleged Beneficiary/Heir

17
 18 This motion is based upon this Notice of Motion and Motion for Reconsideration, the
 19 concurrently filed Memorandum of Points and Authorities, the Declaration of Steve K. Zinnel, and
 20 the Index of Exhibits, and upon such oral argument as may be presented to the Court at the hearing
 21 noticed above.

22
 23 Dated: October 20, 2023

24
 25
 26
 27 Steven Zinnel
 28 Objector and Co-Beneficiary of the Castana Trust dated March 4, 2009 In Pro Per

VERIFICATION

I, STEVEN ZINNELL, declare:

I have read the foregoing NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF THE COURT'S EX PARTE ORDER MADE ON OCTOBER 16, 2023 ENTITLED "ORDER EX PARTE APPLICATION FOR ORDERS DIRECTING TRUSTEE" and know the contents thereof. I believe that the same are true of my own knowledge. I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this verification was executed on **October 20, 2023**, at Aliso Viejo, CA.

3

Steven Zinnel

Objector and Co-Beneficiary of the Castana Trust dated March 4, 2009 In Pro Per

EXHIBIT 5

STEVEN ZINNELL
11 Verdin Lane
Aliso Viejo, CA 92651

T. 213-547-6456
E. firsthalfsteve@gmail.com

Creditor of the Estate of David P. Zinnel In Pro Per

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

IN THE MATTER OF:

Case No. 34-2023-00336772

ESTATE OF DAVID P. ZINNELL

**NOTICE OF MOTION AND MOTION FOR
RECONSIDERATION OF THE COURT'S *EX
PARTE* ORDER ISSUED ON OCTOBER 16, 2023
ENTITLED "ORDER EX PARTE
APPLICATION FOR ORDERS DIRECTING
ADMINISTRATOR"
[C.C.P. §1008]**

Hearing

Date:

Time:

Dept: 129

Judge: Hon. John P. Winn

TO MICHAEL BRUMBAUGH, JENNIFER ZINNELL, JOSHUA ZINNELL,
KATELYNN ZINNELL, AND ATTORNEY KENNETH GREGORY PETERSON:

1 PLEASE TAKE NOTICE that on the date, time, and department specified above in the
 2 caption on page 1, or as soon thereafter, as the matter may be heard in Department 129 of the above-
 3 entitled Court located at the William R. Ridgeway Family Relations Courthouse, 3341 Power Inn
 4 Road, Sacramento, CA 95826, Creditor of the Estate of David P. Zinnel In Pro Per (“Zinnel”) will,
 5 and hereby does, move Judge John P. Winn to reconsider the *ex parte* order he made on October 16,
 6 2023 entitled “Order *Ex parte* Application for Orders Directing Administrator” (“*EX PARTE*
 7 ORDER”) ¹ by simply signing Movant’s Proposed Order and **thereafter enter a new order**
 8 **DENYING the *ex parte* application of Movant Michael Brumbaugh filed on October 12, 2023**
 9 **in its entirety.** Said motion will be made pursuant to California *Code of Civil Procedure* §1008 and
 10 upon the following compelling grounds:

11 A. The motion for reconsideration is brought pursuant to California *Code of Civil Procedure*
 12 §1008 as there are new facts, different facts, new circumstances, and law to reverse the EX
 13 PARTE ORDER and point out the fraud on the court committed by Petitioner Michael
 14 Brumbaugh and his attorney Kenneth Gregory Peterson;

15 B. In support of the Application for *Ex parte* order there was no “Declaration” under penalty of
 16 perjury explaining of the facts of the case, and why the matter is so urgent it should be heard
 17 *ex parte* as required by California *Rules of Court* Rule 3.1202(c) which mandates a
 18 supporting declaration of all *ex parte* applications;

19 C. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
 20 the court in their *ex parte* application that *there is a commercial yard located in Sacramento*
 21 *County where there are a number of used vehicles, equipment and other personal property*
 22 *that are believed to be property of the Estate.* In fact the used vehicles, equipment and other
 23 personal property are not part of the Estate of David Zinnel and Steven Zinnel has been trying
 24 for over a year now to get back his property.

25
 26
 27 ¹ A true and correct copy of the Order that Zinnel moves to the court to reconsider is attached to the concurrently filed
 28 Index of Exhibits as Exhibit 2.

1 D. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
2 the court in their *ex parte* application that *the vehicles, equipment and other personal*
3 *property are of any unique value and due to the ongoing rental expense they should be*
4 *liquidated as soon as possible*. In fact the used vehicles, equipment and other personal
5 property have likely been sitting on the commercial yard located in Sacramento County for
6 around ten (10) years so there is no urgency other than returning the property to Zinnel.

7 E. The EX PARTE ORDER denies Zinnel any remedy in his pending appeal of the August 15,
8 2023 order appointing Michael Brumbaugh as the Administrator of the Estate of David
9 Zinnel because the damage inflicted by Michael Brumbaugh and his attorney Kenneth
10 Gregory Peterson will be done by the time the Third District Court of Appeal decided the
11 pending appeal causing great prejudice to Steven Zinnel;

12 F. When *ex parte* notice was given to Stven Zinnel by someone from attorney Kenneth Gregory
13 Peterson's law office via telephone on October 11, 2023 at around 10:45 A.M., Steven Zinnel
14 requested the *ex parte* application be emailed to him forthwith. However, by the time Zinnel
15 had to mail his skeletal opposition by Priority Mail on October 11, 2023, Zinnel had never
16 received Movant's *ex parte* application by email thus Zinnel was prevented from fully
17 opposing the *ex parte* application which greatly prejudiced Steven Zinnel;

18 G. When *ex parte* notice was given to Stven Zinnel by someone from attorney Kenneth
19 Gregory Peterson's law office via telephone on October 11, 2023 at around 10:45 A.M., the
20 name of the case was not provided, the case number was not provided, the name of the court
21 was not provided, nor was the requested relief provided, thus by the time Zinnel had to mail
22 his skeletal opposition by Priority Mail on October 11, 2023, Zinnel had no idea what the
23 case nor what relief was requested and thus Zinnel was prevented from fully opposing the
24 *ex parte* application resulting in Steven Zinnel being greatly prejudiced;

25 H. It appears that Judge John P. Winn did not consider Steven Zinnel's skeletal opposition to
26 Movant's *ex parte* application and thus he mistakenly thought the *ex parte* application was
27 unopposed;

28

1 I. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatant misrepresentations
2 to this court in their *ex parte* application filed on October 12, 2023 that Zinnel had no chance
3 to bring to the court's attention before the court simply signed Movant's Proposed Order Ex
4 parte Application for Orders Directing Administrator;

5 J. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
6 the court in their *ex parte* application that the Estate of David Zinnel needs to participate in
7 the Ninth Circuit Court of Appeals Case entitled *United States of America v. Steven Zinnel*
8 / *TD Ameritrade Clearing, Inc.*, Ninth Circuit case #22-16128 ("Federal Appeal") when in
9 fact the David Zinnel was never a party in the underlying United States District Court case
10 and David Zinnel dismissed his Third-Party Claim. Thus, the Estate of David Zinnel has no
11 standing in the pending federal appeal. Thus, the Estate of David Zinnel has no dog in the
12 fight in the federal garnishment appeal and there is no reason to waste Estate resources
13 participating in the federal appeal;

14 K. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
15 the court in their *ex parte* application that Steven Zinnel's Issue on Appeal in the pending
16 Ninth Circuit is: *it is believed that through his appeal to the Ninth Circuit Court of Appeals*
17 *[Steven Zinnel] seeks to overturn the settlement* [agreement reached on June 3, 2022 in the
18 United States District Court] when in fact Attorney Kenneth Gregory Peterson has known
19 for over a year that Steven Zinnel is not challenging the June 3, 2022 Settlement Agreement
20 and is actually seeking to enforce the agreements made by the government during the Court-
21 supervised Settlement Conference;

22 L. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
23 the court in their *ex parte* application that *[Zinnel] has since refused to observe his*
24 *obligations under the [June 3, 2022] settlement agreement*;

25 M. Attorney Kenneth Gregory Peterson and Michael Brumbaugh blatantly misrepresented to
26 the court in their *ex parte* application that the TD Ameritrade IRA titled in Zinnel's deceased
27

1 mother Ardith Ferris' name is a Castana Trust asset when in fact during a hearing in this
2 court, in this case, on April 7, 2022, Judge Joginder Dhillon stated that the TD Ameritrade
3 IRA titled in Zinnel's deceased mother Ardith Ferris' name would have to be probated and
4 United States of America's attorney AUSA Lynn Trinka Ernce stated in papers filed in the
5 United States District Court and during the June 3, 2022 Settlement Conference, that the TD
6 Ameritrade IRA titled in Zinnel's deceased mother Ardith Ferris' name was not a Castana
7 Trust asset under the law;

8 N. There is no reason Jennifer Zinnel cannot participate in the Federal Appeal right now as she
9 has previously filed a motion with the Ninth Circuit Court of Appeals to be the appellee;

10 O. The relief sought in the *ex parte* application affects Steven Zinnel's substantial rights thus
11 a noticed motion was required. (See, *Sole Energy Co. v. Hodes* (2005) 128 Cal.App.4th
12 199, 207.)

13 P. The relief sought in the *ex parte* application cannot be pursued on an *ex parte* basis; instead,
14 it must be requested through a properly notice motion. (Weil et al., Civil Proc. Before Trial
15 (Rutter, 2013) ¶ 9:347-49; *St. Paul Fire & Marine Ins. Co. v. Sup. Ct* (1984) 156 Cal.App.3d
16 82, 86.)

17 Q. The *ex parte* application did not demonstrate emergency situations where there is not
18 enough time for a standard motion, which typically take about four weeks (16 court days
19 minimum);

20 R. Because of the one-sided nature of an *ex parte* application and the obvious due process
21 concerns, the court should have issued an order setting the matter for hearing and giving
22 Steven Zinnel time to receive the *ex parte* application and file a complete opposition;

23 S. In the alternative, the court should have appointed a temporary special administrator
24 pursuant to *Probate Code* §1310(b) if the court had concerns regarding the administration of
25 the Estate of David Zinnel.

26 ///

27 ///

28

1 Pursuant to California *Probate Code* §17201 the names and addresses of each person entitled
 2 to notice of this motion are:

3 Kenneth Gregory Peterson 4 K. Greg Peterson, APC 5 455 Capitol Mall, Suite 325 Sacramento, CA 95814 6 Email: greg@kgregpeterson.com	Michael Brumbaugh MBI Consulting Group, Inc. P.O. Box 3100 Fair Oaks, CA 95628 Email: mike@mbi-re.com
7 Alleged attorney for Michael Brumbaugh, the 8 <i>Estate of David P. Zinnel</i> and the <i>Castana</i> 9 <i>Trust dated March 4, 2009</i>	Alleged Administrator of the <i>Estate of David</i> <i>P. Zinnel</i> and the alleged Successor Trustee of the <i>Castana Trust dated March 4, 2009</i>
10 Jennifer Zinnel 11 6939 Lisa Marie Way Carmichael, CA 95608 12 Spouse of Deceased David P. Zinnel and alleged Beneficiary/Heir	
13 Joshua Zinnel 14 6939 Lisa Marie Way Carmichael, CA 95608 15 Child of Deceased David P. Zinnel and 16 alleged Beneficiary/Heir	Katelynn Zinnel 6939 Lisa Marie Way Carmichael, CA 95608 Child of Deceased David P. Zinnel and alleged Beneficiary/Heir

17
 18 This motion is based upon this Notice of Motion and Motion for Reconsideration, the
 19 concurrently filed Memorandum of Points and Authorities, the Declaration of Steve K. Zinnel, and
 20 the Index of Exhibits, and upon such oral argument as may be presented to the Court at the hearing
 21 noticed above.

22
 23 Dated: October 20, 2023

24
 25
 26
 27 Steven Zinnel
Creditor of the Estate of David P. Zinnel In Pro Per

VERIFICATION

I, STEVEN ZINNELL, declare:

I have read the foregoing NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF THE COURT'S EX PARTE ORDER MADE ON OCTOBER 16, 2023 ENTITLED "ORDER *EX PARTE* APPLICATION FOR ORDERS DIRECTING ADMINISTRATOR" and know the contents thereof. I believe that the same are true of my own knowledge. I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this verification was executed on October 20, 2023, at Aliso Viejo, CA.

Steven Zinnel

Creditor of the Estate of David P. Zinnel In Pro Per

CERTIFICATE OF SERVICE

(When All Case Participants, except for Steven Zinnel, are Registered with the Court's CM/ECF System)

I hereby certify that at the date of service, I was over the age of 18. I further certify all of the participants in the case, except for Steven Zinnel, as a non-attorney Pro Se party, are registered CM/ECF users and that service will be accomplished by the CM/ECF system **AND** by email. The foregoing document(s) were served on the following persons and/or organization via the CM/ECF system **AND** by email:

Lynn Trinka Ernce, Esq. United States Attorney's Office 501 I Street, Suite 10-100 Sacramento, CA 95814 Email: lynn.trinka.ernce@usdoj.gov Attorneys for the United States of America	Kenneth Gregory Peterson K. Greg Peterson, APC 455 Capitol Mall, Suite 325 Sacramento, CA 95814 Email: greg@kgregpeterson.com Attorneys for Michael Brumbaugh and Jennifer Zinnel
---	---

I further certify the foregoing document(s) were served by the following method(s) checked:

BY THE COURT'S CM/ECF System: All the participants in the case, except for Steven Zinnel, as a non-attorney Pro Se party, are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

BY ELECTRONIC MAIL: I caused the foregoing document(s) to be transmitted via electronic mail to the email address(es) as above described.

Executed on **October 25, 2023**, at Aliso Viejo, California. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Steven Zinnel